appears to be such on the books of the company, the present tendency is to regard that liability as based upon estoppel, and to protect the pledgee whenever it can be done consistently with that principle. Furthermore, since his legal ownership is in fact only accidental to the whole transaction, the courts, effectuating the real intentions of the parties, will apply liberally a statute relieving him from these liabilities.

In the recent case of *VanTuyl* v. *Robin* (App. Div. 1st Dept. 1913) 145 N. Y. Supp. 121, it was held that a pledgee of bank stock, who is registered as a stockholder on the books of the corporation, is subject to the special liabilities imposed by a provision of the state constitution upon the stockholders of banking institutions. The court disregarded a provision of the Stock Corporation Law relieving pledgees from such liability,[15] and construed a provision of the Banking Law, defining "stockholder", which might have been interpreted to protect him, as excepting the pledgee from liability only when he did not appear to be a stockholder upon the books of the company. The court adopted the view taken in an early case where a similar provision in the Constitution of 1846 was held to impose this liability upon all stockholders of record.[16] It is to be regretted that the court felt constrained to take this position, for in view of the real relations of the parties, and the liberality with which such statutes are usually construed, especially in New York,[17] the decision is distinctly retrogressive.

LICENSE TAXATION OF FOREIGN CORPORATIONS.—The extent to which the Fourteenth Amendment limits the power of the States to impose privilege taxes upon foreign corporations engaged in local and interstate commerce is not yet clearly defined. It has been determined on the one hand that a corporation is not a citizen entitled to the privileges and immunities of citizens of the several States;[1] and on the other, that it is a person, whose property may not be taken without due process of law. But for a long time the Supreme Court held that since a corporation has no legal existence outside of the State that charters it, it is not a person in any other jurisdiction, and so not entitled to the equal protection of the laws in foreign States.[2] Hence, a corporation seeking to do a local business in a foreign State may be compelled to pay any tax or submit to any regulation however unrea-

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[15]This provision seems to have been made applicable by § 71 of the Banking Law. See opinion of the lower court in the principal case. (Sup. Ct. 1913) 80 Misc. 360, 367.

[16]Matter of Empire City Bank, *supra*.

[17]See 80 Misc. 360, 367, *supra*. "The stock book is presumptive evidence only of the title. It may be rebutted and the character of the ownership shown. It is always competent to show that an instrument absolute on its face was intended only as a security." Citing McMahon *v.* Macy, *supra*. According to this construction, it would seem that the pledgee would never be estopped to deny his apparent absolute ownership.

[1]Paul *v.* Virginia (1868) 8 Wall. 168; Blake *v.* McClung (1898) 172 U. S. 239, 259.

[2]Blake *v.* McClung, *supra*, p. 261; Pembina Mining Co. *v.* Pennsylvania (1888) 125 U. S. 181

sonable as the price of the license;[3] it has no constitutional right to demand admission,[4] and so cannot object to any conditions which the State may impose unless constitutional privileges, such as the right of removal of causes, are denied.[5] The right to do an interstate business, however, is not within the power of the States to burden or deny. Therefore a statute requiring the payment of a tax or the performance of certain conditions before any business may be done in the State is void so far as it interferes with interstate commerce,[6] and is wholly unenforcible as a condition precedent to the transaction of local business, unless it can be shown that the abandonment of the latter will not seriously impair the interstate business of the corporation.[7] But if such a law has been construed by the state court to apply only to intrastate commerce, the federal courts are bound by such construction, and will support it accordingly.[8]

It was originally thought that the State's right to deny to foreign corporations the privilege of doing an intrastate business existed whether the corporation was applying for the first time for admission or whether it was already established in the State; for it was said that the establishment of a local business must have been made with knowledge of the State's untrammeled right to withdraw the privilege.[9] Only when an actual contract could be found between the State and the corporation was the latter protected from subsequent unfavorable legislation.[10] In 1910 it was suggested that the acquisition by a foreign corporation of permanent and valuable property in the State constituted it a person within the jurisdiction so that subsequent discriminatory legislation would violate its rights under the Fourteenth Amendment.[11] The suggestion has rapidly developed into a leading principle,[12] and would seem to apply to all foreign corporations so circumstanced whether engaged in interstate[13] or purely local commerce.[14] An important limitation of the principle is found in the recent case of *Baltic Mining Co.* v. *Massachusetts* (1913) 231 U. S. 68, where a tax of one-fiftieth of one per cent. of the total authorized capital stock of foreign corpora-

[3]Waters-Pierce Oil Co. *v.* Texas (1900) 177 U. S. 28; see Allen *v.* Pullman Co. (1903) 191 U. S. 171.

[4]Security Mutual Life Ins. Co. *v.* Prewitt (1906) 202 U. S. 246; Paul *v.* Virginia, *supra.*

[5]See Harrison *v.* St. Louis & S. F. R. R. (1914) 34 Sup. Ct. Rep. 333.

[6]Crutcher *v.* Kentucky (1891) 141 U. S. 47.

[7]Western Union Tel. Co. *v.* Kansas (1910) 216 U. S. 1.

[8]Osborne *v.* Florida (1897) 164 U. S. 650; Waters-Pierce Oil Co. *v.* Texas, *supra;* Pullman Co. *v.* Adams (1903) 189 U. S. 420; Beale, Foreign Corporations, § 752.

[9]Philadelphia Fire Ass'n. *v.* New York (1886) 119 U. S. 110, 119; see dissenting opinion in Western Union Tel. Co. *v.* Kansas, *supra,* p. 55.

[10]American Smelting Co. *v.* Colorado (1907) 204 U. S. 103; 8 Columbia Law Rev. 137, 506; 20 Harvard Law Rev. 405.

[11]Concurring opinions of Mr. Justice (now Chief Justice) White in Western Union Tel. Co. *v.* Kansas, *supra,* p. 48, and in Pullman Co. *v.* Kansas (1910) 216 U. S. 56, 63.

[12]See 11 Columbia Law Rev. 393; 9 Michigan Law Rev. 549.

[13]Southern Ry. *v.* Greene (1910) 216 U. S. 400; see Herndon *v.* Chicago, R. I. & P. Ry. (1910) 218 U. S. 135.

[14]See 14 Columbia Law Rev. 454.

tions doing business in the State was sustained with regard to two foreign trading corporations. The objections to the tax were: first, that it made no distinction between interstate and intrastate commerce; but the state court had removed this difficulty by construing it as applicable only to corporations engaged in local business in Massachusetts.[15] Second, that it was substantially a tax on property outside the jurisdiction, since it bore no relation to the capital employed in the State; but it was held to be a tax on the privilege of doing business, and so, being lawfully within the taxing power of the State, it might be measured by property which was itself non-taxable.[16] And lastly, it was urged that since the corporations had been established in the State before the statute in question was enacted, they should not be subjected to its discriminatory provisions. In refuting this argument, the court added the logical limitation to the principle suggested by Chief Justice White: that where the business of a foreign corporation within the State is separable from that carried on across its borders, and the property employed in the local business may be removed or diverted to other uses, in short, where the intrastate commerce may be renounced and abandoned without material interference with the interstate commerce nor substantial loss of property to the company, the corporation is not entitled to the equal protection of the laws and stands in no better position than if it were then for the first time seeking admission to the State.

SUITS AGAINST STATE OFFICERS UNDER FOURTEENTH AMENDMENT.—The limitations upon the powers of the States imposed by the Fourteenth Amendment, similar to the other constitutional provisions, affect the fundamental quality of the States as absolute inhibitions.[1] It follows that any act of an individual, although ostensibly the act of the State through its agent, if it is without the scope of its constitutional powers, is in fact incapable of being the act of the legal entity, the State, and is solely that of the individual. A suit against a state officer for an invasion of constitutional rights, therefore, is directed against him as an individual for a wrong committed under color of state authority, and not in the capacity of an agent of the State;[2] and it is immaterial whether his act is sought to be justified under a constitutional or an unconstitutional statute.[3]

Chief Justice Marshall laid down the rule that for a suit to be against the State within the Eleventh Amendment the State must be

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[15]Baltic Mining Co. *v.* Commonwealth (1911) 207 Mass. 381; White Mfg. Co. *v.* Commonwealth (1912) 212 Mass. 35; Att'y. Gen'l. *v.* Elec. Storage Battery Co. (1905) 188 Mass. 239.

[16]*Accord,* Horn Silver Mining Co. *v.* New York (1892) 143 U. S. 305; Home Ins. Co. *v.* New York (1890) 134 U. S. 594; Flint *v.* Stone Tracy Co. (1911) 220 U. S. 107, 162-5; 11 Columbia Law Rev. 474; *contra,* reasoning of court in Western Union Tel. Co. *v.* Kansas, *supra,* p. 30.

[1]Poindexter *v.* Greenhow (1884) 114 U. S. 270. That the State can do acts in violation of the Constitution is the more convenient language of the cases. *Cf. Ex parte* Virginia (1879) 100 U. S. 339.

[2]See United States *v.* Lee (1882) 106 U. S. 196.

[3]Reagan *v.* Farmers' Loan & Trust Co. (1893) 154 U. S. 362.